SUPREME COURT OF THE UNITED STATES.

No. 102.—October Term, 1927.

Robins Dry Dock & Repair Company, Petitioner, vs. George Flint, Samuel W. Collins and Ludwig T. Brehm, etc.	On Writ of Certiorari to the United States Circuit Court of Appeals for the Second Circuit.

[December 12, 1927.]

Mr. Justice Holmes delivered the opinion of the Court.

This is a libel by time charterers of the steamship Bjornefjord against the Dry Dock Company to recover for the loss of use of the steamer between August 1 and August 15, 1917. The libellants recovered in both Courts below. 13 Fed. (2d) 3. A writ of certiorari was granted by this Court. 273 U. S. 679.

By the terms of the charter party the steamer was to be docked at least once in every six months, and payment of the hire was to be suspended until she was again in proper state for service. In accordance with these terms the vessel was delivered to the petitioner and docked, and while there the propeller was so injured by the petitioner's negligence that a new one had to be put in, thus causing the delay for which this suit is brought. The petitioner seems to have had no notice of the charter party until the delay had begun, but on August 10, 1917, was formally advised by the respondents that they should hold it liable. It settled with the owners on December 7, 1917, and received a release of all their claims.

The present libel 'in a cause of contract and damage' seems to have been brought in reliance upon an allegation that the contract for dry docking between the petitioner and the owners 'was made for the benefit of the libellants and was incidental to the aforesaid charter party' &c. But it is plain, as stated by the Circuit Court of Appeals, that the libellants, respondents here, were not parties to that contract 'or in any respect beneficiaries' and were not entitled to sue for a breach of it 'even under the most liberal rules

that permit third parties to sue on a contract made for their benefit.' 13 F. (2d) 4. 'Before a stranger can avail himself of the exceptional privilege of suing for a breach of an agreement, to which he is not a party, he must, at least show that it was intended for his direct benefit.' *German Alliance Insurance Co.* v. *Home Water Supply Co.*, 226 U. S. 220, 230. Although the respondents still somewhat faintly argue the contrary this question seems to us to need no more words. But as the case has been discussed here and below without much regard to the pleadings we proceed to consider the other grounds upon which it has been thought that a recovery could be maintained.

The District Court allowed recovery on the ground that the respondents had a 'property right' in the vessel, although it is not argued that there was a demise, and the owners remained in possession. This notion also is repudiated by the Circuit Court of Appeals and rightly. The question is whether the respondents have an interest protected by the law against unintended injuries inflicted upon the vessel by third persons who know nothing of the charter. If they have, it must be worked out through their contract relations with the owners, not on the postulate that they have a right *in rem* against the ship. *Leary* v. *United States*, 14 Wall. 607. *New Orleans Belize Royal Mail & Central American Steamship Co.* v. *United States*, 239 U. S. 202.

Of course the contract of the petitioner with the owners imposed no immediate obligation upon the petitioner to third persons as we already have said, and whether the petitioner performed it promptly or with negligent delay was the business of the owners and of nobody else. But as there was a tortious damage to a chattel it is sought to connect the claim of the respondents with that in some way. The damage was material to them only as it caused the delay in making the repairs, and that delay would be a wrong to no one except for the petitioner's contract with the owners. The injury to the propeller was no wrong to the respondents but only to those to whom it belonged. But suppose that the respondent's loss flowed directly from that source. Their loss arose only through their contract with the owners—and while intentionally to bring about a breach of contract may give rise to a cause of action *Angle* v. *Chicago, St. Paul, Minneapolis & Omaha Ry. Co.*, 151 U. S. 1, no authority need be cited to show that, as a general rule, at least, a tort to the person or property of one man does not make

the tortfeasor liable to another merely because the injured person was under a contract with that other, unknown to the doer of the wrong. See *National Savings Bank* v. *Ward*, 100 U. S. 195. The law does not spread its protection so far. A good statement, applicable here, will be found in *Elliott Steam Tug Co., Ltd.* v. *The Shipping Controller*, [1922] 1 K. B. 127, 139, 140. *Byrd* v. *English*, 117 Ga. 192. *The Federal No. 2*, 21 F. (2d) 313.

The decision of the Circuit Court of Appeals seems to have been influenced by the consideration that if the whole loss occasioned by keeping a vessel out of use were recovered and divided a part would go to the respondents. It seems to have been thought that perhaps the whole might have been recovered by the owners, that in that event the owners would have been trustees for the respondents to the extent of the respondents' share, and that no injustice would be done to allow the respondents to recover their share by direct suit. But justice does not permit that the petitioner be charged with the full value of the loss of use unless there is some one who has a claim to it as against the petitioner. The respondents have no claim either in contract or in tort, and they cannot get a standing by the suggestion that if some one else had recovered it he would have been bound to pay over a part by reason of his personal relations with the respondents. The whole notion of such a recovery is based on the supposed analogy of bailees who if allowed to recover the whole are chargeable over, on what has been thought to be a misunderstanding of the old law that the bailees alone could sue for a conversion and were answerable over for the chattel to their bailor. Whether this view be historically correct or not there is no analogy to the present case when the owner recovers upon a contract for damage and delay. *The Winkfield*, [1902] P. 42. *Brewster* v. *Warner*, 136 Mass. 57, 59.

Decree reversed.

A true copy.

Test:

Clerk, Supreme Court, U. S.